

Arizona Registrar of Contractors Handling a Dispute in Residential Construction

AUGUST 2002



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A GUIDE FOR CONSUMERS & CONTRACTORS

STATE OF ARIZONA
REGISTRAR OF CONTRACTORS



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**THE MISSION OF THE REGISTRAR OF CONTRACTORS
IS TO PROMOTE QUALITY CONSTRUCTION BY
ARIZONA CONTRACTORS THROUGH A LICENSING AND
REGULATORY SYSTEM DESIGNED TO PROTECT THE
HEALTH, SAFETY, AND WELFARE OF THE PUBLIC.**

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INTRODUCTION

Even the best-made plans can run into problems. Despite the care you have taken in planning and carrying out your residential construction project, it is possible a dispute may arise between you and the contractor.

In most cases correction by your contractor of defects in workmanship or materials is all that you need. But in other instances you may have to hire another contractor to complete the job and recover money in a legal action to pay for it.

The best protection against later problems is to deal only with licensed contractors. The State imposes workmanship standards on licensed contractors and offers some important financial protections to the consumer through the office of the Registrar of Contractors.

This booklet explains the various services and remedies available to customers of licensed contractors. It reviews the procedures involved in filing a complaint with this agency; such as the role of the inspector, the purpose of a job site inspection, how an administrative hearing is conducted and how to seek judicial review of an order. It also covers the legal process necessary for collecting money from a contractor's license bond or the Residential Contractors' Recovery Fund.

This pamphlet has been published as a public service by the Registrar of Contractors and the Residential Contractors' Recovery Fund. We hope it is of use to you.

LICENSING REQUIREMENTS

Arizona requires contractors to have a valid residential license to do construction work on a house, townhouses, condominiums, cooperative units or apartment complexes of four units or less.

There is an exemption from licensing requirements for handymen doing small construction and repair projects that do not require a building permit, are not part of a larger project, and cost less than \$750 for both labor and materials, even if the materials are purchased by the homeowner.

When you deal with a contractor who should be licensed but isn't, you are doing business with a person who is in violation of the law. Anyone contracting without a license where one is required, is committing a class 1 misdemeanor, punishable by a fine of up to \$2,500 and/or 6 months in jail.



The Registrar of Contractors does not have jurisdiction over unlicensed contractors regarding workmanship issues but Civil Penalties may be levied and collected. Unlicensed contracting is a criminal matter which is handled by the appropriate prosecuting jurisdiction after investigation by the Registrar of Contractors is complete. The illegal status of the unlicensed contractor strips the consumer of important financial protections, too. A homeowner may run the risk of financial responsibility for injuries suffered on the premises by an unlicensed contractor or the unlicensed contractor's employees since most do not carry workers' compensation insurance.

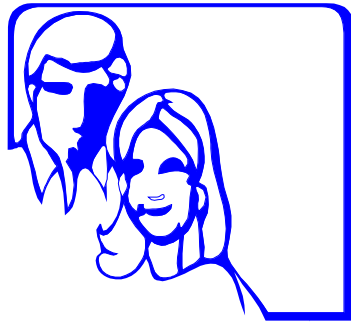


YOU HAVE A PROBLEM

If a dispute occurs while a project is under construction or after it is completed, the property owner should turn to the contractor first, applying equal doses of diplomacy and reason. On the disputes over workmanship, two reasonable parties usually can resolve their differences with an honest effort.

Occasionally, talking to the contractor does not solve the problem. Perhaps there is an honest disagreement as to whether the work or materials are substandard. Maybe the contractor has gone out of business and abandoned the job.

The Registrar of Contractors offers several methods of resolving disputes. The methods range from having all parties meet at the work site with an impartial inspector who will recommend a solution, to a formal hearing where specific action can be ordered. The primary goal of this process is to get necessary repairs performed for the homeowner. An important secondary goal is to revoke the license of contractors who do not abide by the rules.



FILING A COMPLAINT

When you are unable to resolve a dispute with a contractor through informal discussion, it may be necessary to file a formal complaint with the Registrar of Contractors. As a general rule, a complaint about defects in workmanship must be filed within two years of the discovery of the defect or occupancy of a the structure, whichever is earlier.

Complaint forms are available at any of our offices or can be downloaded from our web site. The locations and phone number of the offices as well as our website address are at the front of this book.

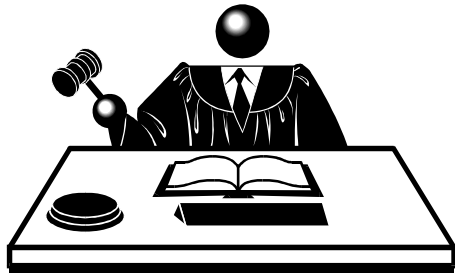
On the complaint form it will be necessary to provide some basic information such as your name and address, the contractor's name and address, the date of the contract, when the work was performed and the nature of the problem. A construction inspector is assigned to investigate each complaint. Chosen for their construction knowledge and experience in the industry, the inspectors fill the role of an impartial third party who will evaluate each side's position and reach an independent judgment as to responsibility.

After filing a complaint, a copy will be sent to the contractor. If this does not prompt the contractor to take care of the problem, an inspector will schedule a jobsite meeting with the homeowner and the contractor. Jobsite inspections can only be held Monday through Friday during regular working hours.

The purpose of the jobsite meeting is to allow the inspector to physically examine the problem area. If necessary, measurements and samples may be taken. The agency has developed a Manual of Minimum Workmanship Standards that deals with many common complaint areas. For example, a crack in a concrete driveway that exceeds 3/32" in width and 1/8" in vertical displacement requires corrective action by the contractor. The contractor should repair cracks up to 3/32" with approved materials in a workmanlike manner.

After the jobsite meeting, the inspector will give written notification to both parties as to the findings. If the inspector believes the contractor is guilty of poor workmanship, a directive will be sent that lists the items that need to be corrected and a time limit for completion. If the inspector finds that the complaint is not justified, both parties will be so notified. As part of this process, the inspector will try to work out a solution that is agreeable to all parties. History shows that most complaints filed with the Registrar of Contractors are resolved by the inspector in this fashion.

If either party disagrees with the inspector's finding, a written request for a hearing may be filed. The granting of a hearing is not automatic. If there is no basis for the complaint, the inspector may recommend that no hearing be held. This recommendation will be reviewed and a letter of denial issued if appropriate. The decision to not grant a hearing is appealable to Superior Court.



AT THE HEARING

An inspector cannot suspend a contractor's license in order to force corrective action. Under the legal principle of due process, this can only be done by the registrar after a hearing or default by the contractor.

A hearing is an administrative disciplinary proceeding similar to a trial in that the homeowner presents the complaint and the contractor must respond. The burden of proving the allegation in the complaint rests with the homeowner. The purpose a hearing is to allow the Administrative Law Judge to determine the facts based upon the evidence presented, to apply the law and to recommend to the registrar sanctions and conditions as may be warranted.

Homeowners frequently ask whether it is necessary to be represented by an attorney at a hearing. Although legal representation may be very helpful when presenting or defending any complaint at a hearing, there is no requirement that you hire a lawyer. An important consideration is whether you feel comfortable in being able to properly present evidence and question witnesses in a judicial setting. The contractor has the same options and may or may not have legal representation at the hearing. In any event your decision must be made in advance, and if you are unsuccessful or fail to obtain the desired results, it is not a valid excuse to later claim that you could have done better with a lawyer.

Administrative hearings are open to the public and it might be helpful to attend other hearings prior to your own. Hearings are held at the Office of Administrative Hearings in Phoenix, Tucson and periodically in other cities and towns throughout Arizona.

To receive a hearing a written request must be filed. If the request is granted, the contractor's license will be cited and a copy of the citation will be sent to the homeowner along with a written explanation of the hearing procedures. The contractor must file a written response to the citation.

The Office of Administrative Hearings will schedule the case for a hearing. The Registrar's office will mail the notice of the time and place of the hearing to the parties. The notice of hearing is sent to the homeowner with a copy of the contractor's response and an explanation of subpoena procedures. Each side is responsible for requesting, obtaining and serving subpoenas on witnesses who may not appear voluntarily.

At the hearing, the homeowner will start first and has the burden of proving the charges in the complaint by a preponderance of evidence. The contractor then will present a defense. When the contractor's case is closed, the homeowner may present additional rebuttal evidence. Witnesses may be cross-examined during the hearing and may be questioned by the Administrative Law Judge.

Following the Hearing, the Administrative Law Judge will write a recommended Decision and Order based on the evidence and testimony presented. The Administrative Law Judge will make findings of fact, conclusions of law and a recommended order for the Registrar's approval and adoption. The Registrar can adopt, modify or reject the recommended Decision and Order. After the Registrar signs the order, it will be mailed to the parties and becomes effective forty (40) days after mailing.

Before the effective date of the order, either party may request a rehearing. When a rehearing is requested, the effective date of the order is suspended. The request for a rehearing will be granted or denied and a new effective date of the order will be set. Rehearings will only be granted for good cause. Good cause may be an irregularity in the proceedings or discovery of evidence that was not available at the time of the hearing.

Once a rehearing is denied or held with a new order being issued, the parties have exhausted the administrative process. Any further appeal would have to be sought from the Superior Court.



FINANCIAL PROTECTIONS

The State of Arizona requires all licensed residential contractors to provide financial protection to their customers. The protections apply whether you buy a new home, remodel, build a swimming pool or have a new roof put on your home. In order to recover compensation for damages on a building project, legal action in civil court is required. A lawyer is usually necessary when civil litigation is involved.

In order to obtain a license, a residential contractor must post a cash deposit or surety bond of \$1,000 to \$15,000. In addition, the residential contractor must either pay into the recovery fund or post a second bond of \$200,000. The vast majority of contractors have chosen to participate in the fund. Therefore, there are actually two programs offering financial protection. We will explain in some detail how to collect from either one.

HOW TO COLLECT FROM A LICENSE BOND

When a residential contractor becomes licensed by the State of Arizona, the licensee must post a license bond ranging from \$1,000 to \$15,000. This money may be posted in the form of cash, a certificate of deposit or a surety bond. The first thing to do is to find out the type of bond held by the contractor and to make sure that it has not already been paid out. This can be done by calling any of our offices and asking for bond information on the particular contractor or by visiting our website.

If the contractor has a surety bond, the surety company has the right to pay a written claim prior to court action, but generally most will require you to get a judgment against the contractor and the surety company. So the first step with a surety bond is to file a written claim with the surety company. If the surety company will not pay your claim, then it is necessary to bring a lawsuit against the contractor and the surety company. Once a favorable judgment is received, the surety company will make payment to you. It is beyond the scope of this pamphlet to review the detailed procedures required during the lawsuit. For that you need to seek legal counsel. **We recommend that you review the statutes governing bonds and the recovery fund that begin at A.R.S. §32-1131, copies of which are available at any of our offices or at our website.**

In order to collect from a cash bond, it is only the contractor who must be sued. It is important that our office be notified in writing when a lawsuit against a license bond has been started. This will prevent the bond from being refunded to the contractor.

A civil judgment against the contractor must specify that it may be satisfied from the cash bond on file with the State Treasurer. Since bonds are paid out in the order that judgments are received by the Treasurer, it is possible that a contractor's account could be depleted before you are able to obtain recovery. It is advisable to act promptly when a problem can't be resolved administratively.

A lawsuit against a license bond must be started within two years after the commission of the act on which the claim is based. When payment is made from a license bond, the contractor's license is automatically suspended until the bond is replaced.

HOW TO COLLECT FROM THE RECOVERY FUND

The recovery fund was established to cover claims against licensed contractors made by the owner of residential real property which is occupied or intended to be occupied by the owner as a residence. Unlike the regular license bond, the recovery fund is not subject to claims by suppliers, subcontractors, laborers or other.

A homeowner may recover as much as \$30,000 from the fund. Only actual damages can be recovered. A total of \$200,000 in claims will be paid for any particular residential contractor. This means that once \$200,000 in claims has been dispersed, the fund would pay no more claims against that contractor's license.

CIVIL LAWSUIT PROCEDURE FOR RECOVERY

A civil action against the contractor for a Recovery Fund claim must be brought in either Justice of the Peace Court or Superior Court. The lawsuit cannot be commenced later than two years from the date of the commission of the act by the contractor that is the cause of the injury or two years from the date of occupancy. Plaintiff must pursue all bonds that are in effect, and this can be accomplished in the same lawsuit. Upon filing the lawsuit, written notice must be given to the Registrar, who may intervene at any time.

The claimant must provide copies of contracts, cancelled checks, front and back, and three (3) estimates of the cost for completing the work. After supporting documents are received, an inspector will schedule a meeting at the house to view the items in question. When all this information is collected, we will calculate the reasonableness of the damages requested and decide whether or not to intervene.

The homeowner must file a copy of the judgment with the Registrar along with at least twenty (20) days written notice of the intent to apply to the court for an order directing payment from the fund. If everything is complete, the court will issue a payment order. The homeowner then needs to file with the Registrar a court certified copy of the payment order. At that point the claim will be sent to administration for processing. A check is usually issued within three (3) weeks.

PLEASE NOTE: If the contractor has filed for bankruptcy, you must first petition the Bankruptcy Court for relief from the automatic stay order imposed upon all potential claimants. Once granted, you may then file your civil lawsuit as outlined above.

Although this process may seem somewhat involved, our experience is that the majority of claims are against insolvent contractors, and there will usually not be a contractor actively fighting the lawsuit, making it much easier to satisfy these requirements.

When payment is made from the recovery fund the contractor's license is automatically suspended by operation of law until the money is repaid to the fund.

ADMINISTRATIVE PROCEDURE FOR RECOVERY

If the contractor's license has been revoked or has been suspended, on your complaint, as a result of an order to remedy a violation, you may be eligible to apply directly to the fund and eliminate the civil process.

A claim form must be completed and filed with our office along with three (3) complete itemized written bids from properly licensed residential contractors for the repairs or completion of the work originally contracted for, copies of any contracts and cancelled checks, front and back. A copy of the escrow settlement should be included with claims covering new residential construction.

THIS ENTIRE PROCESS TAKES AT LEAST 16 WEEKS BEFORE ACTUAL DISTRIBUTION OF FUNDS.

BANKRUPTCY CASES MUST FOLLOW THE CIVIL LAWSUIT PROCEDURE LISTED ON THE PREVIOUS PAGE UNLESS THE FEDERAL BANKRUPTCY COURT SPECIFICALLY GRANTS RELIEF FROM THE AUTOMATIC STAY ORDER ALLOWING ACCESS TO THE RECOVERY FUND UNDER A.R.S. § 32-1154.E.

OTHER PUBLICATIONS

Copies of the following publications are available at any office of the Arizona Registrar of Contractors or on our website.

Consumers and Contractors:

A Guide to Contracting for Residential Construction

A Consumer Guide to Filing Construction Complaints

Registrar of Contractors - Statutes and Rules

Manual of Minimum Workmanship Standards

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